

CONSTITUTIONAL DESIGN: AN OXYMORON?

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Now that the latest wave of worldwide democratization has apparently ended, debates have begun about institutions appropriate to the consolidation of new democracies. Lively controversies have raged about the respective merits of presidential and parliamentary systems, proportional and plurality electoral systems, unitary and federal governments.¹ No sooner have these debates captured the imagination of academicians and policymakers than it has become clear that a peculiar set of problems surrounds the maintenance of democracy in societies severely divided along ethnic lines. For these societies, special sets of institutions seem to be required to insure that minorities who might be excluded by majoritarian systems be included in the decision-making process and that interethnic compromise and accommodation be fostered rather than impeded.

These issues are of pressing importance in conflict-prone societies all around the world, from Northern Ireland in Western Europe to Bosnia, Slovakia, Romania, Bulgaria, Macedonia, and Cyprus in Eastern Europe, to Tatarstan, Georgia, Kazakhstan, and Moldova in the former Soviet Union, to Sri Lanka, Pakistan, and Fiji in Asia and the Pacific, to South Africa, Nigeria, Kenya, and Sudan in Africa. Perhaps surprisingly, there is no agreement on the political and constitutional arrangements most likely to be

conducive to peace and accommodation in a democratic context. Some scholars advocate one set of electoral and governmental arrangements; others favor an alternative set. Practitioners often have different views altogether. More often than not, for reasons I shall elaborate below, inapt institutions or peculiar mixes of institutions are adopted, with little discernible effect on the conflicts they are intended to ameliorate and sometimes with clearly dysfunctional effects on those conflicts and on the future of democracy in the affected countries.

The present paper seeks to move beyond debates over the configuration of appropriate institutions and to focus on the reasons that democratic institutions appropriate to the predicament of severely divided societies are unlikely to be adopted by them. The debates thus far have had a curiously abstract air about them, in the sense that the participants lay down prescriptions for the affected societies, rather as a physician prescribes for a patient, operating on the assumption that the patient can simply choose to take the medicine. The trouble with this unspoken assumption is that there is no single patient involved at all; instead, there are collectivities. To put the point directly, it is very difficult for divided societies to adopt coherent institutional packages or to follow even the very best advice, whatever that might be. The reasons for this difficulty need careful specification, which they have not yet received (the issue has hardly even been noticed), for in *this difficulty lie the seeds of a great many failures of democracy and of interethnic accommodation, even in otherwise favorable circumstances.* Those who prescribe institutions may be quite right to think that they would have important consequences, were they adopted, but they have been remiss in failing to give equal attention to the process that determines whether they will be adopted.

Following a brief description of the substance of the debates in this field, the essay turns to the issues surrounding constitutional and political innovation in severely divided societies. After enumerating the obstacles to innovation, the essay then considers whether and how the obstacles can be overcome. In its present form, this effort is very much a provisional report on research that is still far from completed. The preliminary finding—really, still a hypothesis—is that, even in circumstances apparently most

conducive to the adoption of coherent institutions, their adoption is unlikely.

THE CONTENDING PRESCRIPTIONS

A great many students of ethnically divided societies have done inventories of measures undertaken to promote interethnic accommodation, either within a democratic or an authoritarian framework.² Without attempting to be comprehensive, others have occasionally advocated particular measures or policies that seemed promising. Still others, particularly recently, have assumed or argued that no such measures are likely to be sufficient and have suggested that, for groups that are not territorially intermixed, secession should be looked upon with much greater favor than it has habitually received.³ The growing receptivity to secession is really a counsel of despair that suggests the urgency of the issues dealt with here. In fact, secession is usually a very bad alternative to attempts of ethnic groups to live together in peace, if not in harmony. For one thing, secession places an international boundary between former domestic antagonists, thereby transforming their domestic conflicts into international conflicts, as partition did for India and Pakistan and as multiple secessions did for the former Yugoslavia. For another, secession cannot provide a clean break, since virtually all secessionist regions are themselves heterogeneous. Rather, secession simplifies intergroup confrontations by breaking up ethnically complex states into smaller compartments in which the struggles of a few groups tend to take a bipolar (or at most tripolar) form and in which one group usually emerges dominant and able to take possession of the new, smaller state for its own ends. In practice, to endorse secession is not so much to fulfill aspirations to self-determination as to allow some groups to determine the future of others.⁴

Although receptivity to secession is growing, it is certainly not the main academic approach to the problems of severely divided societies, as it is not the main approach in practice. Two other approaches have gained a measure of scholarly acceptance, but neither has much to show for itself in the actual practice of severely divided societies.

The first, and better known, approach to the problems of severely divided societies is consociation, a prescription for treating the multiethnic state for some purposes as if it were more than one polity and for according to each of the subpolities—the main ethnic groups—a considerable degree of veto power and autonomy.⁵ Consociational democracy is not majoritarian democracy but a form of consensual democracy, in which all major groups are represented in governing grand coalitions in proportion to their numbers, in which elections are conducted by proportional representation in order to insure ethnic proportionality, in which major decisions are made by consensus (and so groups are accorded vetoes over them), and in which matters of concern to only one group are delegated for decision to that group. This is an approach to government that takes ethnic group divisions very seriously and is prepared to prevent majorities from ruling minorities by altering the rules of the game away from majority rule. Ethnic groups and ethnically based political parties are taken to be the building-blocks of the system, and conflict is to be contained by keeping each out of the affairs of the others and allowing each to prevent governmental action impinging on its distinctive interests.

Consociationalism is, then, a plan by which the ill effects of adversary democracy in divided societies are to be kept at bay, for electoral minorities need not risk total exclusion. Everyone is to be included in a grand coalition—that is, a coalition of parties representing all the groups, rather than representing any collection of parties with more than half the seats. Elites form a cartel to produce this result. As Arend Lijphart says, “The primary characteristic of the consociational democracy is that the political leaders of all significant segments of the plural society cooperate in a grand coalition to govern the country.”⁶

I shall make no effort in this paper to conceal my view that consociational methods are inapt to mitigate conflict in severely divided societies, that they are more likely the product of resolved struggles or of relatively moderate cleavages than they are measures to resolve struggles and to moderate cleavages. Nor shall I do more than mention the powerful objection that, if indeed consociationalism really works as specified, it creates an altogether too cozy relationship among parties included in govern-

ment and provides no room for a feature vital to democracy: opposition.⁷ Instead, I shall recapitulate some objections to consociational theory that I have voiced in various other places,⁸ but from then on ask not whether consociationalism is effective when adopted but whether it can be adopted intact. For there is no doubt, as we shall see, that various features of consociational democracy have attractions to some political leaders, usually minority leaders. And whatever its deficiencies as a means of reducing conflict, consociational democracy, in its original formulation at least, constitutes a coherent program: its parts are meant to fit together. As I shall suggest, the adoption of certain pieces of the program without others can produce results at odds with the goal of conflict reduction. The question I want to focus on here is whether consociational democracy or any other coherent plan can be adopted. But first the critique.

To some extent, lack of adoption of consociational schemes may be a function of the insights of decision-makers that those schemes will not help them out of the predicament they face as leaders in divided societies. It is certainly true that few severely divided societies have gone in this direction, some that are asserted to have adopted consociational methods have not actually done so, and some that have been coerced toward a consociational course (such as Cyprus and, recently, South Africa) have rapidly turned away from that course.

Insofar as consociationalism requires leaders to parcel out sovereign power to ethnic groups in divided societies, it seems plain enough that those who have all of state power within their reach have no incentive to take a large fraction of it and give it away. The most likely motive advanced, the awareness by leaders of the risk of mutual destruction, is based on a time horizon not generally employed in the calculations of political leaders: *après moi le déluge*. In any case, it certainly is not clear to them in advance that disintegrative conflict is not best deterred by a system that keeps power in their own hands. Furthermore, the sentiments of leaders and followers in divided societies are hardly conducive to what are regarded as concessions to the other side. If statesmanship is required, then it needs to be pointed out that the assumption that elites are invariably less ethnocentric than their supporters is without foundation. Most studies do not show leaders

to be less ethnocentric than their followers, and some studies show that ethnocentrism actually increases with education.⁹ Whatever the dispositions of leaders may be, when leaders have tried to compromise, it has been shown repeatedly that leadership leeway is very narrow on issues of ethnic power in severely divided societies. Compromisers can readily be replaced by extremists on their flanks, once the latter are able to make the case that a sellout of group interests is in progress. In short, no mechanism can be adduced for the adoption or retention of consociational institutions, particularly no reason grounded in electoral politics.

In conditions of free elections, the very creation of an interethnic coalition, whether intended to be a grand coalition or not, gives rise to ethnic opposition parties and so precludes such a coalition, even if it endures, from becoming a grand coalition. It is no accident that not one of the four developing countries asserted by Lijphart to be consociational in the 1970s—Lebanon, Malaysia, Surinam, and the Netherlands Antilles—had a grand coalition. Each had a coalition of parties, opposed by others, not a “coalition of the segments,”¹⁰ and some violated other consociational criteria as well. Malaysia followed rules of disproportion, rather than proportion, had no mutual vetoes, and allowed only limited cultural autonomy. Lebanon had a presidential system, which Lijphart argues is inimical to power-sharing. India, asserted by Lijphart to have followed the consociational course,¹¹ has never had a grand coalition in the independence period and is a leading example of adversary, rather than consensual, democracy in Asia.

The electoral system favored by consociationalists, list-system proportional representation, insures the representation of ethnically based parties in proportion to their underlying votes, but this hardly can guarantee conciliatory results. If it fragments the electorate, list PR may give rise to coalitions, but there is nothing inherent in that electoral system that provides incentives to create an inclusive or grand coalition, as opposed to the usual sort of majority coalition. In many countries using list PR, adversary, majoritarian democracy has flourished. Where parties are ethnically based, as they are in severely divided societies, list PR is perfectly compatible with the domination of some groups by others.

The combination of list PR and ethnically based parties is in-

imical to incentives to make electoral appeals across group lines that might reduce the exclusive character of ethnic outcomes. With ethnic parties and list PR, the zero-sum relations of party lists to each other translates into a zero-sum competition between ethnic groups as well.¹² Absent PR, various distortions of electoral outcome—for example from accidents of electoral demography that produce wasted majority votes—might accidentally give minorities more than a proportionate share of seats and thus mitigate the severity of minority exclusion. PR eliminates distortions, benign as well as malign.

A rather different approach also takes ethnic group politics as the starting point and aims at multiethnic government, but without reversing majoritarian practices. Instead, it aims at majoritarian decisions made by a moderate, interethnic center. The underlying mechanism is based on incentives. The objective is to make multiethnic participation and compromise rewarding to all the participants who practice it. The approach differs in yet another way from consociationalism, because it does not require that leaders act on conciliatory feelings that do not exist; it assumes only that they will follow their interests.¹³ Unlike consociationalism, this approach does not rest on a specified set of structures to be adopted invariably from country to country but upon certain mechanisms that the structures are to be designed to bring into play.

Since such an approach is based on political incentives, it requires some institutions that are specially tailored to majority rule in divided societies. The underlying mechanisms lie in inducements to politicians and their followers to engage in interethnic cooperation. Sometimes these inducements are supplemented by structures that simultaneously heighten intraethnic divisions, for fractions of groups may have greater incentives to cooperate across group lines than do entirely cohesive groups. The institutions that have such effects are largely territorial or electoral.

Depending on how boundaries are drawn, federalism can fragment groups and induce intergroup accommodation. When Hausa-Fulani dominance of all of Northern Nigeria was broken by new federal arrangements that divided the former Northern Region into states, new parties arose in minority areas of the

North, for now they had a chance to control a state rather than engage in a futile competition with a majority party within the undivided region. The weakened grip of the Hausa-Fulani provided a strong inducement for Hausa-Fulani politicians to seek allies from among other groups, something that a feature of the electoral system introduced in 1978 also induced them to do. I shall return to this example shortly.

Electoral systems are crucially important institutions in pushing political leaders toward ethnically conciliatory or ethnically exclusive strategies. If, for example, an electoral system rewards parties and politicians who take account of the interests of voters from groups other than their own, those parties and politicians will learn how to behave in an accommodative fashion. If the goal is to produce a moderate, interethnic center, it is necessary to provide ethnically based parties with electoral incentives to take moderate positions on issues of interethnic relations and to form electoral alliances and governing coalitions with moderate parties of other ethnic groups. Absent such electoral incentives, where parties break along ethnic lines, as they habitually do in divided societies, democratic business-as-usual results in the bifurcation of the included and the excluded. Group A, whose party holds 60 percent of the parliamentary seats, simply excludes Group B, with 40 percent.

Some multiethnic states have stumbled across apt institutions to mitigate polarization of this kind, often using electoral incentives to encourage moderation, and a few have begun to explore more deliberate constitutional measures to achieve these objectives. To be sure, ethnic demography often makes the task difficult. Heterogeneous constituencies, usually essential to the creation of conciliatory electoral systems, are not always easy to construct. Group settlement patterns may result in territorial separation. And it will require coherent packages of institutions, not partial adoptions, to make such incentives to intergroup accommodation effective.

Because this approach is designed to reward political leaders for interethnic moderation, sustaining the system, once it is adopted, will be much easier than sustaining consociational arrangements that are based merely on exhortations and constitutional constraints, devoid of political incentives. The politician

who has benefited from appealing to voters across group lines will obviously see this behavior as being in his or her interest. Still, the threshold problem of adoption remains. Rather than innovate with an explicit view to conciliation, most states, most of the time, have adhered to institutions associated with their former colonial power or to institutions that were otherwise familiar to them. Very few states have learned from the actual experience with ethnic conflict of any other state.

THE COHERENT PACKAGE PROBLEM

This, then, is the depressing state of the available wisdom on one of the most important problems of the contemporary world: how to achieve democratic inclusion in severely divided societies. Two main approaches compete for acceptance, neither yet verifiable by the actual experience of divided societies, due to a threshold problem: precisely because the societies are divided, their divisions prevent them from taking action to breach their divisions, and so one cannot say whether the action would be effective if taken.

Both approaches need coherent packages of institutions to reduce conflict. Consociational theory demands (1) grand governing coalitions of all the main groups; (2) proportional representation elections; (3) proportional representation by ethnic groups in cabinet membership, public offices, and distribution of resources; (4) consensual rather than majority decision-making—that is, mutual group vetoes; and (5) a large measure of group autonomy. This is an elaborate set of interlocking structures, a fixed basket of institutions.

If consociational measures work to reduce conflict, they work together. If some parts of the package were adopted but others were not, the results could be worse than doing nothing at all. For example, with list-system proportional representation in a system of ethnic parties (the usual situation), the number of seats won by the various parties will tend to reflect the ethnic proportions of the voting-age population. If, as a concession to obtain adoption of proportional representation, the group that wanted PR agreed in return to abandon the equally consociational demand for consensual decision-making (that is, group vetoes), the

result would be the worst of both worlds: majority exclusion of the minority, abetted by an electoral system that, by assuring the minority could gain only minority support, perfected the exclusion and made it more predictable. A good case can be made that just such an incoherent compromise is the fate of many consociational proposals once they are negotiated. The more general point is that the way in which the features of a constitutional design combine or break apart has much to do with outcomes that are intended or perverse. Proportional representation may look functional in a divided society if group vetoes guarantee consensual outcomes, but it looks dysfunctional without those vetoes. Again, the total package is decisive.

The incentives approach does not require specific structures. It is, for example, at home with any of several different electoral systems, depending on the context—and I shall soon mention a couple of these systems—provided that the system is strongly conducive to interethnic moderation in the appeal for votes and provided that the system is adopted across the board, so that moderation in one governmental body is not undone by countervailing incentives to extremism in another. But coherent, consistent packages of this kind are most unlikely to be produced by the political process that typically surrounds the adoption of innovations to reduce conflict in severely divided societies. This is for reasons I shall specify in a moment.

The disjunction of process and substance forms the core of my argument. So many forces favor the pursuit and exacerbation of conflict—and even deadly violence—in severely divided societies that anything less than a coherent package is unlikely to provide a sufficient counterweight to those forces, and yet only partial measures that are doomed to fall short of the coherent package stand a real chance of adoption most of the time.

To see why this is so, it will be necessary to delve into some actual examples of ameliorative measures that were adopted but proved inadequate, but first I want to make explicit a point I only hinted at earlier. Those polities that most need institutions to reduce interethnic conflict are those that are most unlikely to adopt them. The very conflicts that make compromise essential preclude agreements to facilitate compromise. Politicians benefiting from hostile sentiment toward other groups are unlikely to

transform the conflict-prone environment that supports their political careers. That does not mean that conflict-reduction measures can never be adopted—the subject of this paper would be completely uninteresting if this were the case—but that they can be adopted, if at all, only at limited times and under certain conditions. Usually, political leaders will conclude, as Archbishop Makarios did with respect to the consociational measures that gave Turkish Cypriots weight in government far out of proportion to their numbers, that there is no reason to make such concessions.¹⁴ Timing and leadership motivation are crucial variables here.

Now to examples of ameliorative measures that were adopted but proved inadequate—Nigeria, Sri Lanka, and Malaysia—and one ongoing example—Fiji—that, while still in the formative stage, also promises to be inadequate. In each case, policymakers hit upon an appropriate conciliatory device but found it insufficient to bear the full weight of ethnic conflict by itself.

In Nigeria (1978), the device adopted was the separately elected president, combined with an electoral system designed to guarantee that the winning candidate was moderate on matters of interethnic relations. The electoral formula involved two sets of requirements: plurality plus geographic distribution. The winning candidate had to receive the largest number of votes plus at least 25 percent of the vote in at least two-thirds of the then-19 states. Since territory was a proxy for ethnicity, the intention was to preclude even two of the three main groups (Hausa, Yoruba, and Ibo) from combining to win the election without minority support. The system worked exactly as intended. The victor in the first presidential election, Shehu Shagari, proved to be a panethnic figure. The problem was that no similar electoral system was adopted for the Nigerian legislature, whose members were elected from largely homogeneous constituencies on a formula requiring only a plurality. Those members acted simply as representatives of their own ethnic groups; they were not inclined to interethnic conciliation; and their pursuit of conflict helped cancel out Shagari's pursuit of accommodation. So here is a case in which the benign effects of one institution—even when combined with another, the federalism that reduced Shagari's party's core support and so made it even more inclined to

accommodation—were outweighed by the negative effects of still others. This is a paradigm of the inadequacy of anything less than a coherent package.

In the same year (1978), Sri Lanka also moved to a presidential system, partly to enable strong leadership to take the measures required to achieve a compromise with the Tamils. There, too, an accommodative electoral formula was adopted. The president was to be elected by a system of alternative voting, a method of election that had enormous potential for minority votes to tip the balance between two Sinhalese candidates and so to provide incentives for one of them to be moderate on issues of concern to Tamils. As in Nigeria, the legislature was elected under a different system likely to produce less conciliatory results. Unfortunately, moreover, by the time of the first presidential election under the new system, ethnic conflict had become so acute that Tamils essentially did not participate, thus effectively forfeiting the potential influence of Tamil voters in the presidential election. By the time of the next election (1988), a civil war was being fought in the Tamil areas, and an electoral boycott was conducted there. In short, the very promising alternative vote system never had a chance because it had been adopted so late in the development of the conflict. This, too, is a recurrent feature of ameliorative innovations: when there is time to act, the matter is not urgent; when the matter is urgent, there is no longer enough time.

The third example is Malaysia, where, at independence, Malaysians had stumbled upon an accommodative political arrangement for their very deeply divided society. For a variety of idiosyncratic reasons, a Malay party, a Chinese party, and an Indian party had formed a coalition to pool each others' votes. To do so, the coalition partners had to compromise on interethnic issues. For some years, those compromises saved Malaysia from becoming a deadly society of the sort Sri Lanka has become. But two problems continued to erode the Malaysian arrangements and the compromises that sustained them. Both are characteristic of the forces that work against durable democratic institutions in divided societies.

The first derived from the process of interethnic bargaining by which the Malaysians came to their constitutional agreement in

the first place. The Malays and Chinese had traded some incommensurables, among them citizenship to the Chinese in return for unspecified measures to advance the Malays economically. The former (citizenship) was conferred at a stroke; the latter, a matter of economic development, could not be handled in the same way. When, years later, Malays regretted the little they had achieved economically, that realization greatly unsettled the basis of the constitutional bargain, jeopardized any further interethnic compromise, and in the end reduced the extent to which the Chinese were included in the political process.

The second, more powerful force for erosion derived from the Malaysian electoral system, which made the exchange of Chinese and Malay votes for coalition candidates a significant phenomenon in only some parliamentary constituencies, rather than all. Whether the moderate interethnic center could prevail over the respective Malay and Chinese extreme parties by pooling moderate Malay and Chinese votes depended on the particular demography and pattern of party support in a given constituency. Consequently, the need to pool votes across ethnic lines—which, according to the incentives view of conciliation, is the very foundation for interethnic compromise—could easily be weakened by changing the territorial boundaries of parliamentary constituencies. By 1974, electoral boundaries had been thoroughly gerrymandered so as to produce more Malay-majority constituencies and to pack Chinese voters into fewer constituencies, but with much greater Chinese majorities in the latter. In such constituencies, Chinese would essentially waste their votes by electing fewer legislators but with overwhelming support.¹⁵

On the one hand, then, accommodative institutions were undermined by other features of the founding compromise that encouraged the groups to measure the benefits and declare any shortfalls a breach of the agreement, casting the legitimacy of the constitutional settlement in question. And, on the other hand, precautions had not been taken against alteration of the electoral situation that had provided the foundation for compromise.

Finally, a quick look at what is emerging in Fiji, a dangerously divided society with a chance to restore a democratic and inclusive system. In 1996, the Fiji Constitution Review Commission rendered a long and thoughtful report, informed by the desire to

make Fiji a democratic society that can manage its ethnic problems between Fijians and Indians.¹⁶ In 1987, a military coup by Fijian forces had rejected an elected but disproportionately Indian government. Three years later, the military regime had promulgated a strongly pro-Fijian constitution that triggered considerable international criticism. As a result, the regime had been forced to promise a serious review. Among other things, the Constitution Review Commission proposed an electoral system, based on alternative voting, intended to foster political cooperation between moderate Fijian and Indian parties. Were it possible for this system to be adopted for a large number of ethnically heterogeneous constituencies, there is little doubt that it would produce a moderate, multiethnic, coalition government. Each of the two major groups has habitually divided its support between two parties of unequal electoral strength. These subethnic divisions, reflected in party politics, would provide conditions conducive to the formation of an interethnic coalition, flanked by ethnic parties opposing its compromises. Even after considerable enlargement of constituencies, however, the fraction of significantly heterogeneous seats was less than half of the total. Fiji, moreover, has a long history of reserving large numbers of seats for members of particular groups who are elected on the votes of members of their group alone (that is, reserved seats and communal rolls). Much as it might have liked to do so, the Commission felt itself unable to abolish all reserved seats, for that would have been an unsettling break with tradition and a step into the unknown that would surely have made the Commission's recommendations unacceptable. Instead, the Commission recommended that 25 reserved seats (12 Fijian, 10 Indian, 3 other minorities) be retained, and that the remaining 45 open seats (about 30 of them heterogeneous in composition) be elected by alternative voting.

Necessary though this course may have been, what it did at the outset was to dilute the conciliatory effects of alternative voting and to permit the members elected from reserved seats to constitute a built-in drag on compromise, for the electoral dynamics of their homogeneous constituencies will propel them to take extreme positions. As in Nigeria, one set of institutions would work against the other, producing an inconsistent set of incentives.

Following receipt of the Commission's report, the balance between reserved and open seats was altered further by a Joint Parliamentary Select Committee on the Constitution, which recommended 46 reserved seats and only 25 open ones (23 Fijian, 19 Indian, 4 other).¹⁷ At the same time, it recommended constitutional provisions for a compulsory "multi-party Cabinet which would, as far as possible, be a fair representation of all parties represented in Parliament."¹⁸ Both of these proposals were incorporated in the new constitution, which provided for much smaller, and therefore less heterogeneous, constituencies and for a requirement that all parties with at least 10 percent of the seats in the lower house be invited to be represented proportionately in the cabinet.¹⁹ However, this requirement of party inclusion in government was not accompanied by any constitutional requirement for consensual government. Rather, government needs only the confidence of the majority of the house.²⁰ Minorities are not to have a veto.

What seems to have happened is that the desire of minority politicians to find their way into government conjoined with the desire of Fijian politicians to restore the international legitimacy Fiji had lost after the events of 1987.²¹ The desire for certainty of inclusion in government pushed Indian politicians toward consociational impulses, while a desire for certainty of representation had frightened Fijian politicians into retention of a majority of reserved seats. Meanwhile, British parliamentary conventions had produced the usual provision about the confidence of the house. The result is a little consociationalism (if a minority option to join the cabinet can be considered consociational), even less in the way of electoral incentives to accommodation, and a large, residual dose of majoritarian institutions. Within a matter of months, the smaller of the two Fijian parties had joined, and some months later already left, the cabinet, so that the inclusive character of the coalition had already been ruptured. The leader of the larger Indian party declared the long constitutional crisis resolved, and Fiji was readmitted to the Commonwealth from which it had been expelled ten years earlier.

This was a hybrid constitution, if ever there were one. (Whether any constitution is other than a hybrid is a question to which I shall return.) From the standpoint of consociationalism,

a proportional electoral system, cultural autonomy, and mutual vetoes are absent. From the standpoint of electoral incentives, unreserved seats are too scarce, the unreserved seats are insufficiently heterogeneous in composition, and, because post-electoral coalitions are not based on compromise necessary to lure votes across group boundaries, they are inadequate to foster conciliation. From the standpoint of majority rule, proportional inclusion of all parties in the cabinet means the end of opposition. (If some parties leave the cabinet, on the other hand, the consociational impulse is defeated.) Containing many professions of the need for interethnic accommodation, the new constitution is assuredly more liberal than its predecessor, but it points toward no clear path to conciliation.

THE COMMON SOURCES OF DIFFICULTY

In these diverse examples—and in many others—there are a number of common sources of difficulty. (There are also a number of hopeful possibilities, even in these examples, but these I leave for the concluding section.) It is necessary to identify the common impediments to coherent institutional packages that are necessary to reverse the conflict dynamics of severely divided societies, both to see how recurrent—and even built-in—they are and to think about how they might be overcome.

First, there is the problem of knowledge. Decision-makers, including constitutional engineers, in most countries are utterly unaware of the techniques that have been utilized and the measures that have been adopted in other divided societies to promote interethnic accommodation. In many countries, there has been until recently only a most imperfect awareness of even the commonality of problems from one country to another: most have tended to think their problems were unique. When they seek to innovate, most decision-makers borrow (or sometimes avoid) institutions from countries with which they are most familiar, whether or not the institutions are apt for their predicament. Ex-colonial countries typically opt for the institutions associated with the mother country, often with unfortunate results. Benin, for example, adopted the French presidential runoff system, thereby turning its tripolar ethnic cleavages into more intrac-

table bipolar ones. Negative learning also takes place. Although both Serbia and Macedonia might have benefited from federal institutions that accorded a measure of autonomy to their unhappy Albanian minorities, both "learned" from the dissolution of Yugoslavia that federalism promotes disintegration, rather than integration. There is a very large failure of knowledge at both ends: (1) failure of states to analyze their own problems accurately and to cast a net widely and in the right direction and (2) failure of external agencies to help in the dissemination of usable knowledge.

Second, related to failures of knowledge at the site of innovation, there is a failure of expertise more generally. Many specialists, called in to help design systems in lands far from home, simply bring along their usual tool kits, which were developed for more or less homogeneous societies. One might well call these visitors provision merchants. In the electoral field, reflecting debates that have little pertinence to the problems of divided societies, they typically advocate (depending on their own preferences) systems that will produce proportionality of seats to underlying votes, or strong and cohesive parties, or a limited number of parties and stable governments, or representatives in close touch with those who elected them. These, after all, constitute the usual evaluative criteria for electoral systems in societies that are not severely divided. More narrowly, they are the ingredients in the enduring but for present purposes inapposite debate between advocates of plurality and of proportional systems. The only purpose of electoral innovation that is of life-or-death relevance to the problems of divided societies—producing inducements to compromise and accommodation—finds no place in this debate, no place in the traditional literature on electoral systems, and generally no place in the on-site advice of experts.

A splendid example is the electoral system adopted in Papua New Guinea at independence. There, an even narrower set of issues dominated debate over the electoral system. The system, borrowed from the colonial power, Australia, was alternative voting, a preferential system with, as I have suggested, considerable power to foster intergroup accommodation, by requiring candidates who wish to reach the majority required for election to gain second-preference support from voters of groups other than

their own. This system, imposed as if by accident, had exactly the conciliatory results one might anticipate.²² Soon after independence, however, the alternative vote was scuttled, in favor of first-past-the-post, on grounds a simpler system was more desirable. The results were immediately apparent in the next elections, in which candidates were returned on small pluralities and with no support outside their own group.²³ Expertise had failed Papua New Guinea miserably by focusing only on the mechanics of balloting. Ironically, this was a case in which a more apt ex-colonial institution was rejected in favor of a less apt one in greater currency elsewhere.

Third, beyond any problems of knowledge, there are enormous disjunctions between what severely divided societies require and the methods that are used to decide on the institutions that will govern those societies. Typically, although the setting varies widely, negotiation is the method by which proposals are hammered out. Negotiation has its own exigencies; it entails bargaining, trading, and splitting differences. If obstacles arise because the participants have divergent preferences, they may exchange incommensurables to overcome the obstacles, thereby producing a *mélange* of institutions or even enshrining inconsistent solutions to problems within the same document. With negotiation, one may contrast planning, a process intended to produce internally consistent solutions to problems. Even from a process of planning, of course, perfectly coherent outcomes are unlikely, but in any case, in democratic constitutional design, bargaining and negotiation are the main modalities. Bargaining has much to commend it, but coherence is not among its virtues.

Of course, it is not bargaining alone, but the specific preferences likely to be entertained by ethnic party leaders in constitutional negotiations. They seek to reduce uncertainty in different ways. Majorities attempt to retain majoritarian institutions insofar as possible, while minorities search for guarantees. Consociational schemes seem to provide guarantees, however illusory they may prove to be in operation, and minorities find them attractive. Majorities are not keen on guarantees for minorities, needless to say, and they are certainly not inclined to the panoply of guarantees provided by consociational theory. If need be, they will agree to some fraction of guarantees, such as proportional

cabinet representation or perhaps a PR electoral system, but they will find minority vetoes especially unattractive. Neither the leaders of majority ethnic parties nor of minority ethnic parties will be tempted to embark on electoral innovations that encourage candidates to seek marginal votes from voters of groups other than their own. Although such innovations are conducive to interethnic compromise, they risk electoral poaching on what would otherwise be the secure clienteles of ethnic parties, and they also pose the more general risk of uncertain electoral outcomes. When ethnic parties produce more or less predictable electoral results, a modicum of risk aversion will impel party leaders to reject systems that create greater uncertainty. Ironically, the very virtue of such systems for divided societies lies precisely in the uncertainty they generate by virtue of greater fluidity of party choice by the electorate. But interethnic virtue here constitutes intraethnic vice.

The result of this pattern of preferences is a distinctly suboptimal outcome. A few guarantees of minority participation, particularly in the cabinet, can be conceded by the majority. Especially if a majority-dominated regime is under international pressure to become less transparently ethnocratic, there are benefits for the regime in such a concession, which the minority will welcome. Incentive-based proposals will be less attractive to both sides. Unless there is external imposition of the constitution, as there was in Cyprus in 1960, or a minority regime is in an unusually strong position to dictate transitional institutions, as in South Africa in 1994, no strongly consociational scheme will be adopted. Even in these cases, the arrangements were not durable, just as the Nigerian and Malaysian incentive-based electoral institutions, both of them partial, were subject to erosion.

The pattern of preferences I have depicted explains the outcome in Fiji and implies that it is not idiosyncratic but is likely to be typical—not the only outcome, no doubt, but probably the most common. Those who plan constitutions may be persuaded that consociational or incentive-based arrangements are preferable, but their influence in the negotiations that lead to adoption is likely to be marginal.

I hasten to add, of course, that planning is a problematic category to begin with. Has anyone, after all, ever succeeded in

planning any large institutional change? If we look to the United States Constitution, it may seem coherent in retrospect, but it was very much the product of *ad hoc* behavior at every step of its framing. Some of its institutions most celebrated as embodying its distinctive genius, especially those that support the separation of powers, were the product of compromise or usurpation. The bicameral solution to the big state–small state problem, with each state to have an equal number of votes in the Senate, was the result of the “great compromise” that saved the Philadelphia Convention; and the presidency was designed in committee by a small clique that wanted a vigorous executive and presented the office as a *fait accompli* to a convention deeply divided on the issue and certainly not disposed toward the proffered solution by anything like a majority.²⁴ By the same token, to say that bargaining determines outcomes is not to indicate anything about the identity, position, power, or preferences of the bargainers. Clearly, it matters whether some of them are in power and others out, whether some can thwart the constitutional change, whether the players are bargaining in the shadow of some larger forces, and so on.²⁵ I do not contrast coherence as an end with bargaining as a means in order to argue that either of these categories is truly homogeneous but only to suggest that the two deserve juxtaposition in this context.

I particularly want to insist on coherence as a virtue of constitutional design for severely divided societies, because their centrifugal forces are so strong that without equally strong, consistent, centripetal institutions their divisions tend to become acute. In a word, strong ethnic affiliations and ordinary democracy combine to produce political exclusion of minorities. The fact that coherence is rare and bargaining is common does not make me naive so much as it makes me skeptical. My central proposition embodies the paradox that substantial compromise on a plan to facilitate interethnic compromise decreases the likelihood of interethnic compromise in the operation of the plan once adopted.

Fourth, severely divided societies have not always been well served by well-intentioned third parties that have tried to assist in mediating solutions. Those third parties whose specialty is negotiation are most unlikely to know very much about severely di-

vided societies. Third-party mediators tend to be interested, above all, in having the parties reach agreement. Mediators and negotiators receive their rewards (sometimes even Nobel Prizes) for reaching agreement: they receive an advance against performance that will not need to be repaid if performance later falls short. By then, they will be working on another problem. Third-party mediators have even stronger interests than negotiators do in reaching agreement, for they, unlike the participants, do not have to live with the results. They are often called "facilitators," a term that aptly describes their role, which is to "get people to the table," "maximize areas of agreement," or "get to 'yes.'" They measure success by the achievement of agreement, and their method is wholly processual, which is to say that it is content-neutral.²⁶ If anything is clear in the field of ethnic conflict, it is that the content of ameliorative institutions is not something about which the participants can afford to be neutral. It follows that not any agreement is preferable to none.

In some ways, the most dangerous people in a negotiation are third parties, those with only detachment to offer. Anything a third-party facilitator can point to in order to induce moderation is probably already discounted in the conflict. Does it stand to reason that those with less interest in the conflict are likely to see a reason for moderating the conflict that the parties, who are more intensely interested in it, have failed to discern? It may be that the incentive to join the European Union will soften the intransigent behavior of ethnic antagonists in Eastern Europe, although the willingness of Lebanese, Cypriots, and Sri Lankans to destroy their *entrepôt* and tourist trades suggests that the lure of prosperity is hardly infallible in inducing moderation. In any case, it is not merely a matter of altering the willingness to make concessions that is crucial—although this is what third parties focus on—but of altering the incentives and behavior of the antagonists once they have made concessions at the threshold, and this depends on what arrangements they agree to. Here third parties are generally not helpful, for at best they are process experts without substantive expertise in the institutions that would reduce conflict,²⁷ and they are likely to see the issue in terms of the antagonists' reluctance or inability to summon up the requisite "political will."

Fifth, the assumption is frequently made about severe conflicts that if the parties could not agree before and can agree on something now, this is a good first step, even if that something is not quite apt to ease their relations. If it is wrong at the outset, it can be fixed later. This assumption is usually incorrect. Interests quickly crystallize around whatever arrangements are adopted, even if they are dysfunctional, so that even if the institutions fail in their public objectives, there are actors whose private success comes to depend on the maintenance of the arrangements. This is most visible in the case of Fiji, where it proved impossible to dislodge the reserved seats even when a fresh start was to be made. Two of the most prominent techniques used by structural engineers (those who build bridges and buildings) to avert failure are redundancy—that is, extra capacity—and midcourse correction, using feedback. For constitutional engineers, midcourse correction is not readily available, since players quickly get attached to the initial institutions that facilitated their success. All that is left, therefore, is redundancy. As I have suggested, some features of the intractable ethnic conflicts dealt with here positively require redundancy, because the whole point of the arrangements is to create institutions that will counter, and counter strongly, again and again, the preexisting incentives of the parties that produced and sustain the conflict at high levels.

In a divided society, it is fortunate if consensus can be reached on any institutions, much less truly apt institutions. Yet it is wrong to think that whatever the parties agree to will be durable. All an agreement means is that it was acceptable to the parties at the moment it was consummated. Other agreements, including much better agreements, might also have been acceptable. It is a mistake to elevate the existence of agreement over the content of agreement when it comes to societies prone to violent conflict. Yet that is what is done, over and over again.

NEW DEPARTURES

Up to this point, it might be appropriate to read this paper as a lament. For the most part, after all, severely divided societies have not had the conflict-reducing institutions they need. In many cases—among them Lebanon, Northern Ireland, Bosnia,

Rwanda, and Sri Lanka—the results have been truly catastrophic. Further catastrophes are waiting in the wings. In the post-Communist world, Romania, Bulgaria, Macedonia, Kazakhstan, Kirghizia, Tatarstan, Bashkortostan, and Crimea, among others, have so far been very lucky. Much of the pessimism, as I have emphasized, derives from the difficulty of finding procedures that are likely to yield the institutional packages divided societies need. And so there is a certain *prima facie* reason for pessimism.

One could paint an even bleaker picture. I have not touched on the whole question of timing. A careful examination of the occasions for constitutional rethinking in severely divided societies reveals that those occasions are few. They tend to occur in the wake of disasters (thirteen years of civil war and military rule in Nigeria) or at those rare moments when momentous general changes are in place (the collapse of Communism or the end of colonialism). These are not everyday occurrences, and so, in addition to all the other impediments to arriving at apt arrangements, there is the prior condition: the existence of an occasion for rethinking the matter at all. Moreover, not all of these moments are conducive to apt innovation. If we ask what it takes to induce ethnic majorities or ethnic groups otherwise politically advantaged to agree to accommodative institutions that do not reinforce their advantages, we have limited the occasions for apt innovation considerably. The end of Communism or of colonialism alone was surely not sufficient.

The exceptional character of the occasions for innovation is suggested by one case in which the requisite inducements were present: Nigeria 1978. Nigerian leaders knew they did not wish to return to the institutions they (rightly) believed were conducive to conflict. More than that, they were unsure who would be victimized in the next conflict and so were eager to design institutions that would make ethnic domination difficult. That they did not fully succeed is attributable more to deficiencies of constitutional technology than of attitude. The Nigerians quite clearly wore John Rawls' "veil of ignorance." Most groups, most of the time, will come to the table unveiled.

Do the many failures of institutional innovation and the maladroitness of outsiders, then, necessarily consign the unlucky inhabitants of conflict-prone countries to lives that are precarious,

uncomfortable, and possibly quite short? There are a few promising openings that remain to be explored at all and on which I intend to focus.

The first is that there is a small but discernible tendency toward the development of a more encouraging species of constitutional engineering. The worldwide growth of democracy has made it uncomfortable for regimes that observe democratic forms but exclude minorities from effective political participation to continue to do business this way. Moreover, when occasions do arise for constitutional innovation, it has become increasingly clear that the making or remaking of a constitution is an international and comparative venture in a way that it was not generally seen to be a couple of decades ago. This is an important change that has not received the notice it deserves. The Nigerians began to think in these terms in 1978, when their Constituent Assembly took a closer look at unfamiliar American institutions that they believed might help them escape their predicament. Much more recently, the South Africans, in the making of their interim constitution and now in the making of their permanent constitution, have cast a very wide net in the search for ideas. Tatarstan gave some attention to practice elsewhere (Puerto Rico, in fact!) when it negotiated its asymmetrical federalism with Russia. The Fiji Constitution Review Commission traveled and consulted around the world, in a careful quest for institutions apt for the divisions it confronted. In general, the cascading democratizations of the early 1990s led those charged with constitutional innovation to begin to think their problems were not *sui generis*.

Yet a strong case can be made that more information has generally not translated into more usable knowledge, that it has meant either more blind copying or very crude adaptation of institutions in use (or in vogue) elsewhere, to produce yet more peculiar hybrids. There seems to be an emerging tendency, for example, toward the adoption of mixed electoral systems, with a newly imported system used for some seats or offices and the preexisting system used for the remainder. Constitutional borrowing in general is a subject for another day, but the more limited point can be made now that the comparative analysis that would need to be done by decision-makers to make borrowing

effective in their home conditions has so far been done very superficially. This calls to mind the impulses of leaders in many divided societies a decade or two earlier to examine what would be required to make their countries just like Switzerland—canonization and all.²⁸

A second potentially promising development suggests a way out of the problem of inducing participants who benefit from the pursuit of ethnic conflict to embark on a quest for accommodative arrangements. In some of the most dangerous cases, it turns out that precisely those leaders who have interests in pursuing conflict are sometimes obliged to put constitutional decision-making in other hands. When that happens, there is an opening for breaking out of conflict-enhancing incentives. That was the case in Nigeria in 1978, when the military regime yielded to pressure to create a Constituent Assembly. It has been the case in Northern Ireland, where the British and Irish governments have been the sources of innovation; and it was also the case in Fiji, where, as in Nigeria, a military regime was obliged to create an independent constitutional commission. The contending parties on Cyprus have so far been conducting their prenegotiations under the aegis of the United Nations. (One could say that the Dayton Accords that produced the Bosnia-Croatia federation derive from a similar lifting of decision-making from familiar to unfamiliar hands, but the Dayton results are hardly of the sort that can be commended.) Finally, the need of governments to conform to Western standards of human rights or to quell the anxieties of investors may yet produce a comparable (and perhaps benign) involvement of outsiders in the process of constitutional innovation, although, as I have argued, the involvement of third parties who specialize merely in negotiation will surely be insufficient.

If this is so, then the prospects may not be quite as bleak as I have suggested they are. There will still be enormous problems of producing coherent and apt institutions, but at least the process will not always be foreclosed at the outset by the interests of political leaders. The focus of my ongoing research, therefore, is on discerning whether the involvement of outsiders (commissions of inquiry and the like) and the growing practice of turning constitution-making into a comparative exercise show signs of producing

the sort of internally consistent, coherent plan that I have argued severely divided societies need. For if, as I have hypothesized, coherent constitutional plans for conflict reduction are unlikely to be adopted, then this hypothesis ought to be able to withstand a test in the circumstances most favorable to its falsification. If, for example, even in conditions most hospitable to elaborate constitutional innovation, what recurrently gets adopted is a *mélange* of inconsistent provisions, then it may be concluded that the hypothesis is true.²⁹

There are several circumstances that may create such favorable conditions. There may be an element of constitutional imposition from outside, as in Northern Ireland. Alternatively, as I mentioned earlier, the existing regime may find its position sufficiently precarious or illegitimate that it is obliged to delegate the formulation of proposals to outsiders, as the Nigerian military regime did in the late 1970s and the Fijian military regime did in the 1990s. Similarly, a regime may find constitution-making power essentially usurped, as African regimes did in the early 1990s, when unofficial but powerful "national conferences" appeared on the scene in Benin, Togo, and elsewhere in Francophone Africa. In such cases, the weakened state of the regime renders it liable to accept plans it might otherwise dismiss, and the forces for bargaining that produce inconsistent outcomes may be temporarily disabled. In still other cases, new regimes may come to power as a result of civil war or the fall of Communism; and, committed to a fresh start on ethnic issues, they may be especially eager to receive expert advice. Eritrea had elaborate constitutional processes and proposals as a result of such a regime change. Regimes that are unusually dependent on the good will of outsiders, particularly the confidence of foreign investors that ethnic conflict will be kept under control, may go out of their way to propitiate external forces by constitutional designs. There are, then, many roads that lead to conditions hospitable to coherent constitutional plans for severely divided societies.³⁰

I cannot say for sure what will result from this research, but perhaps I can introduce what may prove to be an important intervening variable: the ambition of the constitutional plan. That this is an important issue is suggested by the Northern Ireland Agreement of 1998.³¹ The agreement is generally, but not per-

fectly, consociational,³² largely because of the power of the external British and Irish authorities to dictate the overall shape of the arrangements (although not the particulars). The agreement contains numerous interesting features, but the one I wish to highlight here is its maximal ambition.

The agreement provides for a very large measure of ethnic proportionality in a variety of institutions, and it makes an advance promise of ethnic equality and—in a fascinating phrase—"parity of esteem" for the two main groups. The phrase is significant, because it goes right to the heart of what divided societies struggle over: whose country this is, who will dominate whom, what the terms of political incorporation will be. Certainly, groups in Northern Ireland have struggled over these issues, particularly the question of whose symbols were entitled to priority of esteem. At a stroke, the agreement promises to bring these struggles to an end, to preempt them, and implicitly to measure future political performance by its conformity to the objective of parity of esteem. Given the (at best) spotty record of political systems in divided societies in providing for the fair treatment of all major groups within them, the agreement sets Northern Ireland up for a possible shortfall. The aptness of the institutions established for Northern Ireland will be sorely tested by the need to meet such maximal standards, rather than merely to muddle along in a more or less peaceful state—which is what ordinarily passes for success when groups are inclined to severe conflict.

The proposed arrangements might just prove durable, were they intended to produce only incremental change in interethnic relations. Indeed, it is a frequent criticism of consociationalism that its arrangements, especially mutual vetoes, are conducive to minimal government in general. One would think that this extraordinarily ambitious agenda would require considerable political support for the emergence of a moderate middle to accomplish it. Institutions that include no likely electoral support for intergroup compromise, that in fact are premised on the electoral status quo,³³ form a particularly unpromising basis for such a political transformation. To put the point provocatively, how can the ambitions of the proposals be realized in the face of something approaching vetoes accorded to the unreconstructed ethnic parties?

If Northern Ireland promises to be a state freighted with burdens too great for its institutions, the Cyprus discussions may be going in an opposite direction, almost to the point of abandoning the interethnic state. A host of outside bodies is involved: the United Nations, Britain, the United States, the European Union, among them. The impulses of at least some of these outsiders seem to embody two main ideas: an extremely decentralized federation, with only those matters requiring central coordination to be handled by the central government, and a central government designed somehow to prevent majority domination.³⁴ Whereas government in Northern Ireland would be required to shoulder heavy burdens in contentious areas, the central government on Cyprus might be divested of all such burdens (and most others as well). So far as ethnic relations go, a new regime on Cyprus would have a light agenda indeed.

This leads me to speculate that there may be four likely outcomes of constitutional processes for divided societies. The outcomes are scaled by the ambition of their designers and the character of the institutions to be introduced. The first, suggested by Serbia and Slovakia, among many others, is ethnically exclusivist, either because the constitution identifies the state with a single group or because straightforward majority rule produces such a result *de facto*. This is, of course, an exceedingly common outcome. The second, exemplified by Fiji (1997) and Nigeria (1978), is a hybrid of institutions combined in such a way as to be inadequate to generate the requisite compromise. The third, illustrated by Northern Ireland, is largely consociational, but probably inadequate to sustain the heavy burden of change laid upon it by external forces eager to transform the conflict dramatically from the start. The fourth, possibly typified by Cyprus, is a minimalist regime, entrusted with doing nothing to change the status quo, because everyone is incredulous of any prospect of doing so. The ambitions range from roughly zero in the first case, to mere peacekeeping in the fourth, to modest accommodation in the second, to serious transformative efforts in the third. If this is the range of likely outcomes, the one combination it excludes is a coherent set of institutions, committed to compromise and capable of effecting at least modest conflict reduction.

It may be "that there is no constitutional solution to be found to the case of really radical social diversity."³⁵ That is, no institutions may be adequate to cabin the conflict. This conclusion is not yet warranted by the evidence, because particular structures do seem to produce particular benign results when they invoke appropriate mechanisms, even where the ensemble of institutions does not produce benign results overall. Still, it may be that no process is adequate to produce an ensemble of institutions that are adequate; and on that the proper view at this point, it seems to me, is pessimistic agnosticism.

NOTES

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1. See, e.g., Giovanni Sartori, *Comparative Constitutional Engineering*, 2d ed. (New York: New York University Press, 1997); Juan Linz and Arturo Valenzuela, eds., *The Failure of Parliamentary Democracy* (Baltimore: Johns Hopkins University Press, 1994); Mathew Shugart and J. M. Carey, *Presidents and Assemblies: Constitutional Design and Electoral Dynamics* (New York: Cambridge University Press, 1993); Donald L. Horowitz, "Presidents vs. Parliaments: Comparing Democratic Systems," *Journal of Democracy* 1:4 (Fall 1990): 73-79; Seymour Martin Lipset, "The Centrality of Political Culture," *Journal of Democracy* 1:4 (Fall 1990): 80-83; Juan T. Linz, "The Virtues of Parliamentarianism," *Journal of Democracy* 1:4 (Fall 1990): 84-91.

2. For some early inventories, see Claire Palley, *Constitutional Law and Minorities* (London: Minority Rights Group Report no. 36, 1978); Milton Esman, "The Management of Communal Conflict," *Public Policy* 21 (Winter 1973): 49-78; Eric A. Nordlinger, *Conflict Regulation in Divided Societies* (Cambridge: Harvard University Center for International Affairs, Occasional Paper no. 29, 1972).

3. See Chaim Kaufmann, "Possible and Impossible Solutions to Ethnic Civil Wars," *International Security* 20 (1996): 136-75.

4. There is a voluminous recent literature on secession, most of it hospitable, which I have reviewed in "Self-Determination: Politics, Philosophy, and Law," *Nomos XXXIX: Ethnicity and Group Rights* (New York: New York University Press, 1997), 421-63.

5. See Arend Lijphart, *Democracy in Plural Societies* (New Haven: Yale University Press, 1977).

6. *Ibid.*, 25.

7. See Courtney Jung and Ian Shapiro, "South Africa's Negotiated Transition: Democracy, Opposition, and the New Constitutional Order," *Politics and Society* 23:3 (September 1995): 269-308.

8. Horowitz, "Self-Determination," 439-40; Horowitz, *A Democratic South Africa? Constitutional Engineering in a Divided Society* (Berkeley: University of California Press, 1991), 137-45, 167-71; Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985), 568-76.

9. The studies are collected in Horowitz, "Self-Determination," 457 n. 31, and Horowitz, *A Democratic South Africa*, 140-41, nn. 44-50.

10. Lijphart, *Democracy in Plural Societies*, 201, 205.

11. Arendt Lijphart, "The Puzzle of Indian Democracy: A Consociational Interpretation," *American Political Science Review* 90 (June 1996): 258-68.

12. I deal with list PR and its anticonciliatory tendencies in Horowitz, *A Democratic South Africa?* 167-76.

13. For general statements of the approach, see Horowitz, *A Democratic South Africa?*; Horowitz, "Ethnic Conflict Management for Policymakers," and "Making Moderation Pay: The Comparative Politics of Ethnic Conflict Management," in Joseph V. Montville, ed., *Conflict and Peacemaking in Multiethnic Societies* (Lexington, Mass.: Lexington Books, 1989), 115-30, 451-76.

14. See David Wippman, "International Law and Ethnic Conflict on Cyprus," *Texas International Law Journal* 31 (Spring 1996): 141-80, at 144-46.

15. This process actually began soon after independence. See Lim Hong Hai, "The Malayan Electoral System: Its Formulation and Change," Ph.D. dissertation, Faculty of Economics and Administration, University of Malaya, 1997, 225-337.

16. *Towards a United Future: Report of the Fiji Constitution Review Commission* (Suva: Parliament of Fiji Parliamentary Paper no. 34 of 1996). I was a consultant to the Commission but had no role in its deliberations or in the drafting of its report. The Commission consulted with proponents of several approaches to conflict reduction. Its report canvassed consociational and incentive-based approaches and opted for the latter

after a quite careful review that constitutes the most incisive analysis of issues of conflict reduction I have seen in a report by policymakers.

17. *Report of the Joint Parliamentary Select Committee on the Constitution* (Suva: Parliament of Fiji Parliamentary Paper no. 17 of 1997), 20.

18. *Ibid.*, 17.

19. Constitution (Amendment) Act 1997 of the Republic of the Fiji Islands, 25 July, 1997, Arts. 50, 51, 54, 99(5). The alternative vote was retained, but the 25 open seats were to be elected in single-member constituencies, whereas the 45 proposed by the Commission were to be elected in 15 larger three-member constituencies, with each member to be elected separately.

20. *Ibid.*, Art. 6(g).

21. For a summary of the Indian parties' submissions to the Constitution Review Commission that urge constitutionally mandated participation in the cabinet of any party that obtained more than 20 percent of the seats, see Yash Ghai, "The Recommendations on the Electoral System: The Contribution of the Fiji Constitution Review," in Brij V. Lal and Peter Larmour, eds., *Electoral Systems in Divided Societies: The Fiji Constitution Review* (Canberra: National Centre for Development Studies, Research School of Pacific and Asian Studies, Australian National University, 1997), 147-59.

22. Cf. Horowitz, *A Democratic South Africa?*, 188-95.

23. See Ben Reilly, "The Effects of the Electoral System in Papua New Guinea," in Y. Saffu, ed., *The 1992 PNG Election: Change and Continuity in Electoral Politics* (Canberra: Department of Political and Social Change, Australian National University, 1996), 43-76.

24. On the Senate, see Max Farrand, *The Framing of the Constitution of the United States* (New Haven: Yale University Press, 1913), 91-112. On the presidency, see Donald L. Horowitz, "Is the Presidency Failing?" *The Public Interest* 88 (Summer 1987): 3-27, at 7-11.

25. Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991), describes a variety of modes of democratization that suggest multiple bargaining situations.

26. I have served on a number of occasions as a mediator, and I can testify to the powerful pull, inherent in the role, to help the parties end their dispute on any terms they find agreeable, no matter how lopsided the merits of the dispute may be.

27. Obviously, I am not referring here to outsiders whose expertise is not in negotiation alone but in measures to reduce ethnic conflict.

28. Sri Lankan Tamil leaders were particularly keen on the Swiss example in the 1950s and 1960s.

29. For the underlying logic, see Gary King, Robert O. Keohane, and Sidney Verba, *Designing Social Inquiry: Scientific Inference in Qualitative Research* (Princeton: Princeton University Press, 1994), 209–12. Cf. Harry Eckstein, "Case Study and Theory in Political Science," in Fred I. Greenstein and Nelson W. Polsby, eds., *Handbook of Political Science*, vol. 7 (Reading, Mass.: Addison Wesley Publishing Co., 1975), 79–137.

30. For some of the pertinent literature, see John R. Heilbrunn, "Social Origins of National Conferences in Benin and Togo," *Journal of Modern African Studies* 31:2 (June 1993): 277–99; Chris Allen, "Reconstructing an Authoritarian State: 'Democratic' Renewal in Benin," *Review of African Political Economy* 54 (July 1992): 43–58; Jean-Jacques Reynal, "Le renouveau démocratique béninois: modèle ou mirage?" *Afrique Contemporaine* 160 (4e trimestre 1991), 3–25; Jon Elster, "Constitutionalism in Eastern Europe: An Introduction," *University of Chicago Law Review* 58:2 (Spring 1991): 447–82; Allison K. Stanger, "Czechoslovakia's Dissolution as an Unintended Consequence of the Velvet Constitutional Revolution," *East European Constitutional Review* 5:4 (Fall 1996): 40–46; Edward W. Walker, "The New Russian Constitution and the Future of the Russian Federation," *Harriman Institute Forum* 5:10 (June 1992): 1–16; A. E. Dick Howard, "The Indeterminacy of Constitutions," *Wake Forest Law Review* 31:2 (Summer 1996): 383–410; Eric Stein, "Post-Communist Constitution-Making," *New Europe Law Review* 1:2 (Spring 1993): 421–75.

31. Agreement Reached in the Multi-Party Negotiations, April 10, 1998.

32. See Brendan O'Leary, "The British-Irish Agreement: Consociation Plus," unpublished paper, London School of Economics, May 13, 1998.

33. The Northern Ireland proposals take party alignments and support as given and make no pretense of trying to alter them.

34. See "Set of Ideas on an Overall Framework Agreement on Cyprus," negotiated by leaders of the Greek Cypriot and Turkish Cypriot Communities, January 20, 1997, available at <http://www.access.ch/tuerkei/GRUPF/f616.htm>

35. Robert E. Goodin, "Designing Constitutions: The Political Constitution of a Mixed Commonwealth," *Political Studies* 44:3 (Special Issue, 1996): 635–46, at 643.